IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1394 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANJIT RAMESHBHAI PRADHAN - Applicant(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SP MAJMUDAR for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR AR MAJMUDAR for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India r.w. section 482 of the Criminal Procedure Code, the

petitioner – original accused has prayed for an appropriate order to quash and set aside the complaint being criminal case No.4332 of 2007 pending in the Court of learned JMFC, Vadodara for the offence punishable under section 138 r.w. sections 141 and 142 of the Negotiable Instrument Act; 1881 (hereinafter referred to as "the NI Act" for short").

2. At the outset, it is required to be noted that this Court issued notices at the request of learned counsel appearing for the petitioner to find out some settlement, however, the learned advocate appearing for the respondent Nos.2 and 3 has submitted that they have tried their best to settle the dispute, however, it is not materialized. Under the circumstances, learned counsel appearing for the petitioner requests to pass an appropriate order considering the averments and allegations in the complaint as well as averments in the petition.

3. It is the contention on behalf of the petitioner

that there is no legal debts with respect to the alleged cheque in question and in fact, Special Civil Suit No.145 of 2006 is pending in the Court of learned Civil Judge (SD), Vadodara seeking a relief to recover an amount of Rs.82,41,930/- which is inclusive of the cheque amount and therefore, the impugned complaint is required to be quashed and set aside. Now, looking to the averments and allegations in the complaint, it prima facie discloses that case under section 138 of the NI Act is made out and whatever is submitted on behalf of the petitioner and the contentions raised in the present petition are all defences, which are required to be considered at the time of trial on leading proper evidence. Merely because, some suit is filed, which is inclusive of the cheque amount, the impugned complaint is not required to be quashed and set aside, if with respect to the cheque in question, a case is made out under section 138 of the NI Act and all the ingredients of section 138 of the NI Act are attracted. Under the circumstances, there is no

substance in the present petition and the same deserves dismissal and is accordingly dismissed. Notice discharged.

[M.R.Shah, J.]

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